COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 27, 1998

COMMONWEALTH OF VIRGINIA, ex rel.

FRANK OTT, et al.

v. CASE NO. PUE960302

WINTERGREEN VALLEY UTILITY COMPANY, L.P.,
Defendant

FINAL ORDER

By letter dated October 4, 1996, Wintergreen Valley Utility Company, L.P. ("Wintergreen" or "the Company") notified its customers pursuant to the Small Water or Sewer Public Utility Act (§§ 56-265.13.1 et seq. of the Code of Virginia) of its intent to revise its tariff for water and sewer service effective December 1, 1996.

The Company proposes the following revisions in rates:

Water Rates (per month)

	Current	Proposed
Residential	$15.00 includes 6,000 gallons	$16.50 includes 4,000 gallons
	$2.40 per 1,000 gallons for usage over 6,000 gallons	$4.50 per 1,000 gallons for usage over 4,000 gallons

Availability Fee	$4.25	$4.25
Commercial	$180.00 includes 120,000 gallons	$16.50 includes 4,000 gallons
	$2.40 per 1,000 gallons for usage over 120,000 gallons	$4.50 per 1,000 gallons for usage over 4,000 gallons

Sewer Rates (per month)

	Current	Proposed
Residential	$30.00 includes 6,000 gallons	$28.00 includes 4,000 gallons
	$2.70 per 1,000 gallons for usage over 6,000 gallons	$5.40 per 1,000 gallons for usage over 4,000 gallons
Availability Fee	-0-	$5.00
Commercial	$360.00 includes 120,000 gallons	$28.00 includes 4,000 gallons
	$2,70 per 1,000 gallons for usage over 120,000 gallons	$5.40 per 1,000 gallons for usage over 4,000 gallons

The Company also proposes to increase its service connection fees and its reconnect fees. The proposed reconnect fee would increase from $15.00 to $25.00 and would expand to include changes in ownership as well as violators of the Company's rules and regulations of service. In addition, the Company proposes to include a $1.00 per month charge for the installation of irrigation meters at the customer's request.

By November 8, 1996, the Commission had objections from approximately 30% of the Company's affected customers. On

November 26, 1996, the Commission entered a Preliminary Order suspending the proposed rates for a period of sixty days and declaring such rates interim and subject to refund, with interest, on and after January 30, 1997. By order entered on December 20, 1996, the Commission established a procedural schedule for the filing of pleadings, testimony, and exhibits and set the matter for hearing before a hearing examiner on July 22, 1997.

In response to customers' requests for local hearings, the Hearing Examiner, in an April 3, 1997 Ruling, scheduled such hearings for July 22, 1997. The Examiner scheduled the remaining portion of the hearing for September 4, 1997.

Pursuant to that Ruling, local hearings were held on July 22, 1997, before Hearing Examiner Howard P. Anderson, Jr. Seven witnesses appeared at the hearings. The speakers mainly objected to the Company's proposed reduction in the minimum usage threshold. There was one complaint about the Company's inability to read meters on the same day of each month and another complaint about the lack of detail on the Company's bill regarding customers' sewer usage. Another witness questioned the Company's management practices with regard to a possible conflict of interest since one of the employees of the management company also served as director of the development firm.

A hearing was also held on September 4, 1997, before Hearing Examiner Anderson. Counsel appearing were Stuart R. Sadler for

the Company and Marta B. Curtis and C. Meade Browder, Jr., for the Commission Staff.

At the commencement of the hearing the Company presented proof of notice. There were no intervenors that appeared at the hearing.

The only issues at the hearing concerned availability fees. Staff recommended a monthly water availability fee of $6.00 and a monthly sewer availability fee of $6.00. Staff also recommended that the development firm, Wintergreen Development Corporation, Inc., be required to pay availability fees for any of the lots it owns. The Company argued that Staff's recommendation for an increase in the water availability fee was improper since those fees had been set by individual contracts with each of the lot owners.

Although not at issue, Staff recommended booking certain accounting adjustments and keeping detailed records of services performed by the management firm, MeadowBrooke Associates ("MBA"). Staff also recommended that Wintergreen make revisions to its tariff with specific reference to changing the language relevant to the reading of meters and omitting the language in Rule 10(c) relevant to the billing of tenants.

On January 26, 1998, the Hearing Examiner filed his Report. The Examiner found that:

1. The use of a test year ending December 31, 1996, is proper for this proceeding;

2. The Company's test year operating revenues, after all adjustments, were $62,571;

3. The Company's test year operating expenses, after all adjustments, were $89,887;

4. The Company's test year adjusted operating income (loss), after all adjustments, was ($27,316);

5. The Company's rate base, after all adjustments, is $34,202;

6. Staff's accounting adjustments and bookkeeping recommendations are reasonable and should be adopted;

7. The Company requires additional gross annual revenues of $28,418, which will afford the Company a combined (water and sewer) 3.22% rate of return on rate base;

8. The Company's proposed rules and regulations, as modified by Staff, are just and reasonable and should be approved;

9. The elimination of Rule 10(c) from the Company's tariff should be approved;

10. The Company's proposed rates and tariffs, as modified by Staff, are just and reasonable and should be approved;

11. The Company's availability fees should be set at $6.00 for water and $6.00 for sewer; Wintergreen Development, Incorporated, should pay availability fees for the lots it owns; and;

12. The Company should keep detailed records of MBA and other third party charges and these charges should be separated between water and sewer operations, effective as of the date of the final order in this proceeding.

The Examiner recommended that the Commission enter an order that adopts the findings in his report; grants the Company an increase of $28,416 in gross annual revenues; approves the Company's tariff, as modified therein, and dismisses the case from the Commission's docket of active cases.

In adopting Staff's accounting adjustments and revenue requirements, the Examiner also adopted Staff's recommended rate design. Specifically, Staff recommended the following monthly rates.

	Water	Sewer
Residential	$16.50 includes 4,000 gallons	$35.00 includes 4,000 gallons
	$3.40 per 1,000 gallons for all usage in excess of 4,000 gallons	$6.40 per 1,000 gallons for all usage in excess of 4,000 gallons
Commercial	$250.00 includes 120,000 gallons	$430.00 includes 120,000 gallons
	$3.40 per 1,000 gallons for all usage in excess of 120,000 gallons	$6.40 per 1,000 gallons for all usage in excess of 120,000 gallons

The Examiner also adopted Staff's recommendation regarding the Company's proposed service connection charges and miscellaneous charges; specifically, that service connection charges be set at

actual cost and that the Company's proposed reconnect fee and meter installation fee be accepted.

NOW THE COMMISSION, having considered the Examiner's Report and the record, is of the opinion that the Examiner's findings and recommendations are reasonable and should be adopted. We agree with the Examiner that availability fees of $6.00 are reasonable. It appears from the record that there are contracts requiring the purchasers of lots to pay a $4.25 water availability fee and, for some purchasers, a $5.00 sewer availability fee. (Exhibit CGN-2 at 3.) We will raise those availability fees for such existing customers.

We will also require the development firm to pay water and/or sewer availability fees. The developer shall be required to pay such availability fees on those lots it owns that do not currently receive water and/or sewer service, but where such services are available upon request. The development firm is an entity separate from the utility with actual and constructive knowledge of such fees. We have previously permitted imposition of availability fees through contract or restrictive covenant in order that purchasers of property have notice of such fees. Notice is required so that a prospective purchaser not be made a customer of the utility involuntarily. Those who purchase with full knowledge of such fees choose to avail themselves of the benefits provided by the availability of utility service. The developer has knowledge of the existence of availability fees and

has obtained the benefit of having an established water and sewer system. It should share the cost of maintaining such systems with purchasers of lots since § 56-265.13:4 of the Code of Virginia requires that " . . . charges made by any small water or utility . . . shall be uniform as to all persons or corporations using such service under like conditions . . .."

Implicit in our finding is the conclusion that an availability fee is a charge for a service[1] subject to the Commission's regulation pursuant to the Small Water or Sewer Public Utility Act. As the Examiner notes, the Commission has the authority to regulate and control rates of public utilities, pursuant to the police power of the State and nonwithstanding rates previously established by contract.[2] See Commonwealth of Virginia ex rel. The Page Milling Company, Inc. v. Shenandoah River Light & Power Corporation, 135 Va. 47 (1923).

IT IS ORDERED THAT:

(1) The findings and recommendations of the Hearing Examiner as detailed in his January 26, 1998 Report are hereby adopted.

[1] Section 56-265.13:2 defines "service" as any product or commodity furnished by a small water or sewer utility as well as equipment, apparatus, appliances and facilities related to the purpose for which the utility is established. (emphasis added).

[2] APCO v. Walker, 214 Va. 524 (1974) is not controlling. In that case, the Virginia Supreme Court held that the Commission does not have exclusive jurisdiction to adjudicate a common law contract claim between an individual and a public service corporation, as opposed to a claim concerning a public duty imposed by law upon public service corporations. Here, the issue is the Company's availability fee; that fee is a component of the Company's schedule of rates and charges, and rules and regulations, subject to the Commission's jurisdiction.

(2) Wintergreen be, and hereby is, granted $28,416 in additional gross annual revenues.

(3) Wintergreen's proposed rates and tariffs, as modified herein, are approved.

(4) On or before June 1, 1998, Wintergreen shall file with the Commission's Division of Energy Regulation revised tariffs reflecting the rates, charges, and rules and regulations of service approved herein.

(5) On or before June 1, 1998, the Company shall file with the Division of Energy Regulation a statement detailing the number and location of developer-owned lots that will now be subject to availability fees in accordance with the terms of this Order.

(6) The Company shall implement Staff's booking recommendations.

(7) This case be, and hereby is, dismissed from the Commission's docket of active cases and the papers placed in the file for ended causes.